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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,602	12/30/2003	James T. Kenny	3101-1	8670

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EXAMINER

LAYNO, BENJAMIN

ART UNIT. PAPER NUMBER

3711

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/748,602	KENNY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Benjamin H. Layno	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Webb.

The patent to Webb discloses a method of playing a poker wagering game between a dealer and at least one player. Webb discloses an embodiment wherein four cards are dealt to each player, and four cards are dealt to the dealer, col. 8, lines 45-46. Webb's game uses a standard deck of 52 playing cards. A published ranking of winning hands ranked from highest to lowest, along with a predetermined pay scale for winning hands is provided, col. 6, lines 20-55. The dealer must achieve a predetermined minimum hand ranking of "queen high hand or better", or the dealer loses after all cards are dealt, col. 7, lines 36-37. A player has the option of placing a first wager "ANTE" against the dealer, and/or placing a separate voluntary wager "PAIR PLUS" against the predetermined pay scale, col. 6, lines 1-18. The game ends if the dealer fails to achieve a qualifying predetermined hand ranking "queen high hand or better". The game also ends if the player place a "PAIR PLUS" wager and achieves a published ranking winning hand. If the dealer achieves the qualifying predetermined hand ranking, play proceeds, and the player places a third support wager "PLAY" in support of the first

wager "ANTE" against the dealer, col. 7, lines 10-17. The player's best four card hand is compared to the dealer's best four card hand to determine relative ranking, and if the player's hand outranks the dealer's hand, the player is paid an amount based on the first wager and third wager, col. 7, lines 36-40. If the player's hand achieves a rank at least as high as the first ranking from the published ranking, the player is paid according to the pay scale, col. 7, lines 44-60. If the player fails to achieve at least the minimum ranking from the published ranking, the dealer inherently takes the player's "PAIR PLUS" wager. If the dealer's hand outranks the player's hand, the player's first wager "ANTE" and third support wager "PLAY" are taken by the dealer, furthermore, if the player's hand is the same as the dealer's hand, the player's first wager "ANTE" and third support wager "PLAY" are returned to the player, col. 7, lines 40-43.

In regard to claim 3, Webb discloses an embodiment for a five-card version of Webb's game, col. 8, lines 45-46.

Concerning claim 4, Webb discloses providing an additional side bet including an additional optional progressive wager for a six-card progression (which at least a five-card progression), a progressive jackpot bet. This progressive jackpot bet has a predetermined published ranking "ace to nine in the same suit" , col. 9, lines 13-20.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb.

As recited above, the dealer must achieve "queen high hand or better" to qualify. However, determining exactly what the predetermined minimum hand ranking that the dealer must achieve in order to continue play (e.g. king high or better, Ace-Queen or better, queen high or better, etc.) would have simply been a casino business decision that is always obvious in the art.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webb as applied to claim 1 above, and further in view of Scott et al.

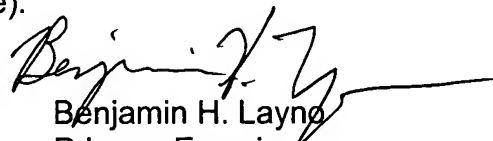
The patent to Scott et al. teaches that it is known to provide a bad beat wager in a poker wagering game, in case the player's hand is outranked by the dealer's hand. Scott et al. also includes a published ranking of winning bad beat hands, col. 6, line 54 to col. 7, line 19. In view of such teaching, it would have been obvious to incorporate a bad beat wager and bad beat published ranking to Webb's game. This modification would have given losing player another chance at receiving a payout, thus making Webb's game more attractive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571) 272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Benjamin H. Layno  
Primary Examiner  
Art Unit 3711

bhl